

U.S.S.N. 09/760,046  
Filed: January 12, 2001  
PRELIMINARY AMENDMENT

### Remarks

Claims 1, 3, 4, 6-13, and 15-27 are pending. The specification has been amended to correct a typographical error. Page 14, lines 28-29 has been amended to insert absolute value symbols around the expressions " $\delta$  solvent  $-\delta$  nonsolvent" and to replace the phrase "less than" with the corresponding symbol, " $<$ ". At the time this application was filed, one of ordinary skill in the art determined the miscibility of two solvents by calculating the absolute value of the difference between the solubility parameter for the solvent and the solubility parameter for the nonsolvent. A clean version of the amendment to the specification is attached as an Appendix.


Attached is a copy of a declaration under 37 C.F.R. § 1.132 by Dr. Gary Huvard which was filed in U.S.S.N. 09/853,329. In the declaration, Dr. Huvard states that it would have been clear to one of ordinary skill in the art that the absence of absolute bars in the solubility formula present in the specification was a typographical error.

The solubility parameter defines the types of solvents and non-solvents that are useful for the formation of the particles. The formula defines the solubility of the solvent in the non-solvent and the non-solvent in the solvent. The results should be the same regardless of which value is subtracted from the other. Thus, the absolute value must be taken to arrive at the proper result. Thus the amendment to the specification merely corrects an obvious typographical error.

U.S.S.N. 09/760,046  
Filed: January 12, 2001  
**PRELIMINARY AMENDMENT**

Correction of the specification and allowance of claims 1, 3, 4, 6-13, and 15-27 is respectfully solicited.

Respectfully submitted,


  
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Reg. No. 48,731

Date: May 9, 2003

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**Certificate of Facsimile Transmission**

I hereby certify that this Preliminary Amendment, and any documents referred to as attached therein are being facsimile transmitted on this date, May 9, 2003, to the Commissioner for Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

  
\_\_\_\_\_  
Pam Turnbough

Date: May 9, 2003

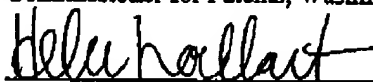
Response Under 37 CFR §1.116  
- EXPEDITED PROCEDURE -  
Examining Group 1711

ATTORNEY'S DOCKET NO. S01393.70005  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Mathiowitz et al.  
Serial No.: 09/853,329  
Filed: May 11, 2001  
For: PROCESS FOR PREPARING MICROPARTICLES THROUGH PHASE INVERSION  
PHENOMENA  
Examiner: Jeffrey C. Mullis  
Art Unit: 1711

CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)

The undersigned hereby certifies that this document is being placed in the United States mail with first-class postage attached, addressed to Box AF Commissioner for Patents, Washington, D.C. 20231, on the 19 day of December, 2002.



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COMMISSIONER FOR PATENTS  
WASHINGTON, D.C. 20231

Sir:

DECLARATION OF DR. HUWARD

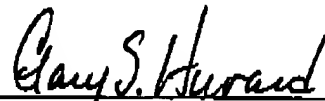
1. I, Gary S. Huward, Ph.D., am a professor of Chemical Engineering. I have worked in the field for 23 years and have worked as a consulting chemical engineer for more than 10 years of this period. I have reviewed the above-identified patent application and I make this Declaration in support of that application.
2. At the time of the invention, the equation  $0 < |\delta_1 - \delta_2| < X$ , where X is a positive number, was well known in the art.
3. The lack of absolute value bars in the equation in the above-identified patent application must be a typographical error. Without the absolute value bars, the formula is not mathematically consistent for all combinations of  $\delta_1$  and  $\delta_2$ . In the intended usage, as

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written, the equation is as inconsistent as the equation  $0 < -1$ . One of skill in the art would recognize that the lack of absolute value bars is necessarily a typographical error.

4. The equation is mathematically inconsistent and incorrect unless the difference,  $\delta_1 - \delta_2$ , is positive. The meaning intended by the applicant is obvious to one of skill in the art as this equation is never used in this context without the inclusion of absolute value bars or, equivalently, without squaring the difference (i.e.,  $(\delta_1 - \delta_2)^2$ ).
5. One of skill in the art would recognize, upon review of the specification, that the lack of absolute value bars was simply a typographical error. There are no other reasonable explanations for the omission of absolute value bars.
6. I, Gary S. Huvard, declare that all statements herein of my own knowledge are true and that all statements made on information and belief are believed to be true. And further, that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of title 18 of the United States Code and that such willful false statements may jeopardize the validity of this document and any patent which may issue from the above-identified patent application.

Date:

12/17/02Gary S. Huvard, Ph.D.